

(j) *Qualification of trust indentures under the Trust Indenture Act of 1939 for delayed offerings.* Include the following if the registrant intends to rely on section 305(b)(2) of the Trust Indenture Act of 1939 for determining the eligibility of the trustee under indentures for securities to be issued, offered, or sold on a delayed basis by or on behalf of the registrant:

The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act (“Act”) in accordance with the rules and regulations prescribed by the Commission under section 305(b)(2) of the Act.

(k) *Filings regarding asset-backed securities incorporating by reference subsequent Exchange Act documents by third parties.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement pursuant to Item 1100(c) of Regulation AB (§ 229.1100(c)):

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 of a third party that is incorporated by reference in the registration statement in accordance with Item 1100(c)(1) of Regulation AB (17 CFR 229.1100(c)(1)) shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(l) *Filings regarding asset-backed securities that provide certain information through an Internet Web site.* Include the following if the registration statement is to provide information required by Item 1105 of Regulation AB (§ 229.1105) through an Internet Web site in accordance with Rule 312 of Regulation S-T (§ 232.312 of this chapter):

The undersigned registrant hereby undertakes that, except as otherwise provided by Item 1105 of Regulation AB (17 CFR 229.1105), information provided in response to that Item pursuant to Rule 312 of Regulation S-T (17 CFR 232.312) through the specified Internet address in the prospectus is deemed to be a part of the prospectus included in the registration statement. In addition, the undersigned registrant hereby undertakes to pro-

vide to any person without charge, upon request, a copy of the information provided in response to Item 1105 of Regulation AB pursuant to Rule 312 of Regulation S-T through the specified Internet address as of the date of the prospectus included in the registration statement if a subsequent update or change is made to the information.

[47 FR 11401, Mar. 16, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 229.512, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### Subpart 229.600—Exhibits

#### § 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* (1) Subject to Rule 411(c) (§ 230.411(c) of this chapter) under the Securities Act and Rule 12b–32 (§ 240.12b–32 of this chapter) under the Exchange Act regarding incorporation of exhibits by reference, the exhibits required in the exhibit table shall be filed as indicated, as part of the registration statement or report.

(2) Each registration statement or report shall contain an exhibit index, which shall precede immediately the exhibits filed with such registration statement. For convenient reference, each exhibit shall be listed in the exhibit index according to the number assigned to it in the exhibit table. The exhibit index shall indicate, by handwritten, typed, printed, or other legible form of notation in the manually signed original registration statement or report, the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located. For a description of each of the exhibits included in the exhibit table, see paragraph (b) of this section.

(3) This Item applies only to the forms specified in the exhibit table. With regard to forms not listed in that table, reference shall be made to the appropriate form for the specific exhibit filing requirements applicable thereto.

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(4) If a material contract or plan of acquisition, reorganization, arrangement, liquidation or succession is executed or becomes effective during the reporting period reflected by a Form 10-Q or Form 10-K, it shall be filed as an exhibit to the Form 10-Q or Form 10-K filed for the corresponding period. Any amendment or modification to a previously filed exhibit to a Form 10, 10-K or 10-Q document shall be filed as an exhibit to a Form 10-Q and Form 10-K. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

*Instructions to Item 601:* 1. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (A) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b) under the Securities Act (§230.424(b) of this chapter), or (B) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the registrant need not refile such exhibit as so amended. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission.

2. In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the reg-

istrant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document a copy of which is filed. The Commission may at any time in its discretion require filing of copies of any documents so omitted.

3. Only copies, rather than originals, need be filed of each exhibit required except as otherwise specifically noted.

4. *Electronic filings.* Whenever an exhibit is filed in paper pursuant to a hardship exemption (§§232.201 and 232.202 of this chapter), the letter "P" (paper) shall be placed next to the exhibit in the list of exhibits required by Item 601(a)(2) of this Rule. Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§232.201 or §232.202(d) of this chapter), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation "CE" (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

### EXHIBIT TABLE

#### Instructions to the Exhibit Table.

1. The exhibit table indicates those documents that must be filed as exhibits to the respective forms listed.

2. The "X" designation indicates the documents which are required to be filed with each form even if filed previously with another document, *Provided, However*, that such previously filed documents may be incorporated by reference to satisfy the filing requirements.

3. The number used in the far left column of the table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

### EXHIBIT TABLE

	Securities Act forms								Exchange Act forms				
	S-1	S-3	S-4 <sup>1</sup>	S-8	S-11	F-1	F-3	F-4 <sup>1</sup>	10	8-K <sup>2</sup>	10-D	10-Q	10-K
(1) Underwriting agreement .....	X	X	X	.....	X	X	X	X	.....	X	.....	.....	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession .....	X	X	X	.....	X	X	X	X	X	X	.....	X	X
(3)(i) Articles of incorporation ...	X	.....	X	.....	X	X	.....	X	X	X	X	X	X
(ii) Bylaws .....	X	.....	X	.....	X	X	.....	X	X	X	X	X	X
(4) Instruments defining the rights of security holders, including indentures .....	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality .....	X	X	X	X	X	X	X	X	.....	.....	.....	.....	.....
(6) [Reserved] .....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

EXHIBIT TABLE—Continued

	Securities Act forms								Exchange Act forms				
	S-1	S-3	S-4 <sup>1</sup>	S-8	S-11	F-1	F-3	F-4 <sup>1</sup>	10	8-K <sup>2</sup>	10-D	10-Q	10-K
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review ..										X			
(8) Opinion re tax matters .....	X	X	X		X	X	X	X					
(9) Voting trust agreement .....	X		X		X	X		X	X				X
(10) Material contracts .....	X		X		X	X		X	X		X	X	X
(11) Statement re computation of per share earnings .....	X		X		X	X		X	X			X	X
(12) Statements re computation of ratios .....	X	X	X		X	X		X	X				X
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders <sup>3</sup> .....			X										X
(14) Code of Ethics .....										X			X
(15) Letter re unaudited interim financial information .....	X	X	X	X	X	X	X	X				X	
(16) Letter re change in certifying accountant <sup>4</sup> .....	X		X		X				X	X			X
(17) Correspondence on departure of director .....										X			
(18) Letter re change in accounting principles .....												X	X
(19) Report furnished to security holders .....												X	
(20) Other documents or statements to security holders .....										X			
(21) Subsidiaries of the registrant .....	X		X		X	X		X	X				X
(22) Published report regarding matters submitted to vote of security holders .....											X	X	X
(23) Consents of experts and counsel .....	X	X	X	X	X	X	X	X		X <sup>5</sup>	X <sup>5</sup>	X <sup>5</sup>	X <sup>5</sup>
(24) Power of attorney .....	X	X	X	X	X	X	X	X	X	X		X	X
(25) Statement of eligibility of trustee .....	X	X	X			X	X	X					
(26) Invitation for competitive bids .....	X	X	X			X	X	X					
(27) through (30) [Reserved] .....													
(31) (i) Rule 13a-14(a)/15d-14(a) .....													
Certifications (ii) Rule 13a-14/15d-14 Certifications .....												X	X
(32) Section 1350 Certifications <sup>6</sup> .....												X	X
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers .....													X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities .....													X
(35) Servicer compliance statement .....													X
(36) through (98) [Reserved] .....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits .....	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents .....									X	X		X	X
(101) Interactive Data File .....	X	X	X		X	X	X	X		X		X	X

<sup>1</sup> An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Form S-3 or F-3; and (2) the form, the level of which has been elected under Form S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

<sup>2</sup> A Form 8-K exhibit is required only if relevant to the subject matter reported on the Form 8-K report. For example, if the Form 8-K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

<sup>3</sup>Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

<sup>4</sup>If required pursuant to Item 304 of Regulation S-K.

<sup>5</sup>Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

<sup>6</sup>Pursuant to §§ 240.13a-13(b)(3) and 240.15d-13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10-Q.

(b) *Description of exhibits.* Set forth below is a description of each document listed in the exhibit tables.

(1) *Underwriting agreement.* Each underwriting contract or agreement with a principal underwriter pursuant to which the securities being registered are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof. Such agreement may be filed as an exhibit to a report on Form 8-K (§249.308 of this chapter) which is incorporated by reference into a registration statement subsequent to its effectiveness.

(2) *Plan of acquisition, reorganization, arrangement, liquidation or succession.* Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(3)(i) *Articles of incorporation.* The articles of incorporation of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever the registrant files an amendment to its articles of incorporation, it must file a complete copy of the articles as amended. However, if such amendment is being reported on Form 8-K (§249.308 of this chapter), the registrant is required to file only the text of the amendment as a Form 8-K exhibit. In such case, a complete copy of the articles of incorporation as amended must be filed as an exhibit to the next Securities Act registration statement or periodic report filed by the registrant

to which this exhibit requirement applies. Where it is impracticable for the registrant to file a charter amendment authorizing new securities with the appropriate state authority prior to the effective date of the registration statement registering such securities, the registrant may file as an exhibit to the registration statement the form of amendment to be filed with the state authority. In such a case, if material changes are made after the copy is filed, the registrant must also file the changed copy.

(ii) *Bylaws.* The bylaws of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever the registrant files an amendment to the bylaws, it must file a complete copy of the amended bylaws. However, if such amendment is being reported on Form 8-K (§249.308 of this chapter), the registrant is required to file only the text of the amendment as a Form 8-K exhibit. In such case, a complete copy of the bylaws as amended must be filed as an exhibit to the next Securities Act registration statement or periodic report filed by the registrant to which this exhibit requirement applies.

(4) *Instruments defining the rights of security holders, including indentures.* (i) All instruments defining the rights of holders of the equity or debt securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant.

(ii) Except as set forth in paragraph (b)(4)(iii) of this Item for filings on Forms S-1, S-4, S-11, N-14, and F-4 under the Securities Act (§239.11, 239.25, 239.18, 239.23 and 239.34 of this chapter) and Forms 10 and 10-K under the Exchange Act (§§249.210 and 249.310 of this chapter) all instruments defining the rights of holders of long-term

debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

(iii) Where the instrument defines the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed, there need not be filed:

(A) Any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10 percent of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request;

(B) Any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered; or

(C) Copies of instruments evidencing scrip certificates for fractions of shares.

(iv) If any of the securities being registered are, or will be, issued under an indenture to be qualified under the Trust Indenture Act, the copy of such indenture which is filed as an exhibit shall include or be accompanied by:

(A) A reasonably itemized and informative table of contents; and

(B) A cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939.

(v) With respect to Forms 8-K and 10-Q under the Exchange Act that are filed and that disclose, in the text of the Form 10-Q, the interim financial statements, or the footnotes thereto the creation of a new class of securities or indebtedness or the modification of existing rights of security holders, file all instruments defining the rights of holders of these securities or indebtedness. However, there need not be filed any instrument with respect to long-term debt not being registered which

meets the exclusion set forth in paragraph (b)(4)(iii)(A) of this Item.

*Instruction 1 to paragraph (b)(4):* There need not be filed any instrument which defines the rights of participants (not as security holders) pursuant to an employee benefit plan.

*Instruction 2 to paragraph (b)(4) (for electronic filings):* If the instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate shall be reproduced in an electronic filing together with a description of any other graphic and image material appearing on the certificate, as provided in Rule 304 of Regulation S-T (§ 232.304 of this chapter).

(5) *Opinion re legality.* (i) An opinion of counsel as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

(ii) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA furnish either:

(A) An opinion of counsel which confirms compliance of the provisions of the written documents constituting the plan with the requirements of ERISA pertaining to such provisions; or

(B) A copy of the Internal Revenue Service determination letter that the plan is qualified under section 401 of the Internal Revenue Code; or

(iii) If the securities being registered are issued under a plan which is subject to the requirements of ERISA and the plan has been amended subsequent to the filing of paragraph (b)(5)(ii) (A) or (B) above, furnish either:

(A) An opinion of counsel which confirms compliance of the amended provisions of the plan with the requirements of ERISA pertaining to such provisions; or

(B) A copy of the Internal Revenue Service determination letter that the amended plan is qualified under section 401 of the Internal Revenue Code.

NOTE: Attention is directed to Item 8 of Form S-8 for exemptions to this exhibit requirement applicable to that Form.

(6) [Reserved]

(7) *Correspondence from an independent accountant regarding non-reliance on a*

*previously issued audit report or completed interim review.* Any written notice from the registrant's current or previously engaged independent accountant that the independent accountant is withdrawing a previously issued audit report or that a previously issued audit report or completed interim review, covering one or more years or interim periods for which the registrant is required to provide financial statements under Regulation S-X (part 210 of this chapter), should no longer be relied upon. In addition, any letter, pursuant to Item 4.02(c) of Form 8-K (§249.308 of this chapter), from the independent accountant to the Commission stating whether the independent accountant agrees with the statements made by the registrant describing the events giving rise to the notice.

(8) *Opinion re tax matters.* For filings on Form S-11 under the Securities Act (§239.18) or those to which Securities Act Industry Guide 5 applies, an opinion of counsel or of an independent public or certified public accountant or, in lieu thereof, a revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to the shareholders as described in the filing when such tax matters are material to the transaction for which the registration statement is being filed. This exhibit otherwise need only be filed with the other applicable registration forms where the tax consequences are material to an investor and a representation as to tax consequences is set forth in the filing. If a tax opinion is set forth in full in the filing, an indication that such is the case may be made in lieu of filing the otherwise required exhibit. Such tax opinions may be conditioned or may be qualified, so long as such conditions and qualifications are adequately described in the filing.

(9) *Voting trust agreement.* Any voting trust agreements and amendments thereto.

(10) *Material contracts.* (i) Every contract not made in the ordinary course of business which is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or report or was entered into not more than two

years before such filing. Only contracts need be filed as to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(ii) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it shall be filed except where immaterial in amount or significance:

(A) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(B) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;

(C) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of such fixed assets of the registrant on a consolidated basis; or

(D) Any material lease under which a part of the property described in the registration statement or report is held by the registrant.

(iii)(A) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant, as defined by

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Item 402(a)(3) (§229.402(a)(3)), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the registrant) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make further grants or awards of its equity securities shall be considered a compensation plan of the registrant for purposes of the preceding sentence.

(C) Notwithstanding paragraph (b)(10)(iii)(A) above, the following management contracts or compensatory plans, contracts or arrangements need not be filed:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(4) Any compensatory plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(5) Any compensatory plan, contract or arrangement if the registrant is a foreign private issuer that furnishes compensatory information under Item 402(a)(1) (§229.402(a)(1)) and the public filing of the plan, contract or arrangement, or portion thereof, is not required in the registrant's home coun-

try and is not otherwise publicly disclosed by the registrant.

(6) Any compensatory plan, contract, or arrangement if the registrant is a wholly owned subsidiary of a company that has a class of securities registered pursuant to section 12 or files reports pursuant to section 15(d) of the Exchange Act and is filing a report on Form 10-K or registering debt instruments or preferred stock that are not voting securities on Form S-1.

*Instruction 1 to paragraph (b)(10):* With the exception of management contracts, in order to comply with paragraph (iii) above, registrants need only file copies of the various compensatory plans and need not file each individual director's or executive officer's personal agreement under the plans unless there are particular provisions in such personal agreements whose disclosure in an exhibit is necessary to an investor's understanding of that individual's compensation under the plan.

*Instruction 2 to paragraph (b)(10):* If a material contract is executed or becomes effective during the reporting period reflected by a Form 10-Q or Form 10-K, it shall be filed as an exhibit to the Form 10-Q or Form 10-K filed for the corresponding period. See paragraph (a)(4) of this Item. With respect to quarterly reports on Form 10-Q, only those contracts executed or becoming effective during the most recent period reflected in the report shall be filed.

(11) *Statement re computation of per share earnings.* A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report. The information with respect to the computation of per share earnings on both primary and fully diluted basis, presented by exhibit or otherwise, must be furnished even though the amounts of per share earnings on the fully diluted bases are not required to be presented in the income statement under the provisions of Accounting Principles Board Opinion No. 15. That Opinion provides that any reduction of less than 3% need not be considered as dilution (see footnote to paragraph 14 of the Opinion) and that a computation on the fully diluted basis which results in improvement of earnings per share not be taken into account (see paragraph 40 of the Opinion).

(12) *Statements re computation of ratios.* A statement setting forth in reasonable detail the computation of any ratio of earnings to fixed charges, any ratio of earnings to combined fixed charges and preferred stock dividends or any other ratios which appear in the registration statement or report. See Item 503(d) of Regulation S-K (§229.503(d)).

(13) *Annual report to security holders, Form 10-Q or quarterly report to security holders.* (i) The registrant's annual report to security holders for its last fiscal year, its Form 10-Q (if specifically incorporated by reference in the prospectus) or its quarterly report to security holders, if all or a portion thereof is incorporated by reference in the filing. Such report, except for those portions thereof that are expressly incorporated by reference in the filing, is to be furnished for the information of the Commission and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy. See Rule 411(b) (§230.411(b) of this chapter).

(ii) Electronic filings. If all, or any portion, of the annual or quarterly report to security holders is incorporated by reference into any electronic filing, all, or such portion of the annual or quarterly report to security holders so incorporated, shall be filed in electronic format as an exhibit to the filing.

(14) *Code of ethics.* Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 406 of Regulation S-K (§229.406) or Item 10 of Form 8-K (§249.308 of this chapter), to the extent that the registrant intends to satisfy the Item 406 or Item 10 requirements through filing of an exhibit.

(15) *Letter re unaudited interim financial information.* A letter, where applicable, from the independent accountant that acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information that pursuant to Rule 436(c) under the Securities Act (§230.436(c) of this chapter) is not considered a part of a registration state-

ment prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of that Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10-Q which is incorporated by reference into the registration statement.

(16) *Letter re change in certifying accountant.* A letter from the registrant's former independent accountant regarding its concurrence or disagreement with the statements made by the registrant in the current report concerning the resignation or dismissal as the registrant's principal accountant.

(17) *Correspondence on departure of director.* Any written correspondence from a former director concerning the circumstances surrounding the former director's retirement, resignation, refusal to stand for re-election or removal, including any letter from the former director to the registrant stating whether the former director agrees with statements made by the registrant describing the former director's departure.

(18) *Letter re change in accounting principles.* Unless previously filed, a letter from the registrant's independent accountant indicating whether any change in accounting principles or practices followed by the registrant, or any change in the method of applying any such accounting principles or practices, which affected the financial statements being filed with the Commission in the report or which is reasonably certain to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under the circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board that creates a new accounting principle, that expresses a preference for an accounting principle, or that rejects a specific accounting principle.

(19) *Report furnished to security holders.* If the registrant makes available to its security holders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part



I of Form 10-Q, the information called for may be incorporated by reference to such published document or statement, provided copies thereof are included as an exhibit to the registration statement or to Part I of the Form 10-Q report.

(20) *Other documents or statements to security holders.* If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of this form the information called for may be incorporated by reference to such published document or statement provided copies thereof are filed as an exhibit to the report on this form.

(21) *Subsidiaries of the registrant.* (i) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. This list may be incorporated by reference from a document which includes a complete and accurate list.

(ii) The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of “significant subsidiary” in Rule 1-02(w) (17 CFR 210.1-02(w)) of Regulation S-X.) The names of consolidated wholly-owned multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, may be omitted, provided the name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given. This instruction shall not apply, however, to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another Federal agency.

(22) *Published report regarding matters submitted to vote of security holders.* Published reports containing all of the information called for by Item 4 of Part II of Form 10-Q or Item 4 of Part I of Form 10-K that is referred to therein in

lieu of providing disclosure in Form 10-Q or 10-K, that are required to be filed as exhibits by Rule 12b-23(a)(3) under the Exchange Act (§ 240.12b-23(a)(3) of this chapter).

(23) *Consents of experts and counsel—*  
(i) *Securities Act filings.* All written consents required to be filed shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion or elsewhere in the registration statement or document filed therewith, a reference shall be made in the index to the report, the part of the registration statement or document or opinion, containing the consent.

(ii) *Exchange Act reports.* Where the filing of a written consent is required with respect to material incorporated by reference in a previously filed registration statement under the Securities Act, such consent may be filed as exhibit to the material incorporated by reference. Such consents shall be dated and manually signed.

(24) *Power of attorney.* If any name is signed to the registration statement or report pursuant to a power of attorney, manually signed copies of such power of attorney shall be filed. Where the power of attorney is contained elsewhere in the registration statement or documents filed therewith a reference shall be made in the index to the part of the registration statement or document containing such power of attorney. In addition, if the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant’s board of directors authorizing such signature shall also be filed. A power of attorney that is filed with the Commission shall relate to a specific filing or an amendment thereto, provided, however, that a power of attorney relating to a registration statement under the Securities Act or an amendment thereto also may relate to any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter). A power of attorney that confers general authority shall not be filed with the Commission.

(25) *Statement of eligibility of trustee.* (i) A statement of eligibility and qualification of each person designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939. Such statement of eligibility shall be bound separately from the other exhibits.

(ii) *Electronic filings.* The requirement to bind separately the statement of eligibility and qualification of each person designated to act as a trustee under the Trust Indenture Act of 1939 from other exhibits shall not apply to statements submitted in electronic format. Rather, such statements must be submitted as exhibits in the same electronic submission as the registration statement to which they relate, or in an amendment thereto, except that electronic filers that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file such statements separately in the manner prescribed by §260.5b-1 through §260.5b-3 of this chapter and by the EDGAR Filer Manual.

(26) *Invitations for competitive bids.* If the registration statement covers securities to be offered at competitive bidding, any form of communication which is an invitation for competitive bid which will be sent or given to any person shall be filed.

(27)–(30) [Reserved]

(31)(i) *Rule 13a-14(a)/15d-14(a) Certifications.* The certifications required by Rule 13a-14(a) (17 CFR 240.13a-14(a)) or Rule 15d-14(a) (17 CFR 240.15d-14(a)) exactly as set forth below:

*Certifications\* I, [identify the certifying individual], certify that:*

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]

[Title]

\*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a-14(a) and 15d-14(a).

(ii) *Rule 13a-14(d)/15d-14(d) Certifications.* If an asset-backed issuer (as defined in § 229.1101), the certifications required by Rule 13a-14(d) (17 CFR 240.13a-14(d)) or Rule 15d-14(d) (17 CFR 240.15d-14(d)) exactly as set forth below:

*Certifications*<sup>1</sup> I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form 10-K and all reports on Form 10-D required to be filed in respect of the period covered by this report on Form 10-K of [identify the issuing entity] (the “Exchange Act periodic reports”);

2. Based on my knowledge, the Exchange Act periodic reports, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, all of the distribution, servicing and other information required to be provided under Form 10-D for the period covered by this report is included in the Exchange Act periodic reports;

4. [I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge and the compliance review(s) conducted in preparing the servicer compliance statement(s) required in this report under Item 1123 of Regulation AB, and except as disclosed in the Exchange Act periodic reports, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s) in all material respects; and]

[Based on my knowledge and the servicer compliance statement(s) required in this report under Item 1123 of Regulation AB, and except as disclosed in the Exchange Act periodic reports, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s) in all material respects; and]<sup>2</sup>

5. All of the reports on assessment of compliance with servicing criteria for asset-backed securities and their related attestation reports on assessment of compliance with servicing criteria for asset-backed securities required to be included in this report in accordance with Item 1122 of Regulation AB and Exchange Act Rules 13a-18 and 15d-18 have been included as an exhibit to this report, except as otherwise disclosed in this report. Any material instances of noncompli-

ance described in such reports have been disclosed in this report on Form 10-K.<sup>3</sup>

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties [name of servicer, sub-servicer, co-servicer, depositor or trustee].]<sup>4</sup>

Date: \_\_\_\_\_

[Signature]

[Title]

<sup>1</sup>With respect to asset-backed issuers, the certification must be signed by either: (1) The senior officer in charge of securitization of the depositor if the depositor is signing the report on Form 10-K; or (2) The senior officer in charge of the servicing function of the servicer if the servicer is signing the report on Form 10-K on behalf of the issuing entity. See Rules 13a-14(e) and 15d-14(e) (§§ 240.13a-14(e) and 240.15d-14(e)). If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent function) must sign if a representative of the servicer is to sign the certification. If there is a master servicer and one or more underlying servicers, the references in the certification relate to the master servicer. A natural person must sign the certification in his or her individual capacity, although the title of that person in the organization of which he or she is an officer may be included under the signature.

<sup>2</sup>The first version of paragraph 4 is to be used when the servicer is signing the report on behalf of the issuing entity. The second version of paragraph 4 is to be used when the depositor is signing the report.

<sup>3</sup>The certification refers to the reports prepared by parties participating in the servicing function that are required to be included as an exhibit to the Form 10-K. See Item 1122 of Regulation AB (§ 229.1122) and Rules 13a-18 and 15d-18 (§§ 240.13a-18 and 240.15d-18 of this chapter). If a report that is otherwise required to be included is not attached, disclosure that the report is not included and an associated explanation must be provided in the Form 10-K report.

<sup>4</sup>Because the signer of the certification must rely in certain circumstances on information provided by unaffiliated parties outside of the signer's control, this paragraph must be included if the signer is reasonably relying on information that unaffiliated trustees, depositors, servicers, sub-servicers or co-servicers have provided.

(32) *Section 1350 Certifications.* (i) The certifications required by Rule 13a-14(b) (17 CFR 240.13a-14(b)) or Rule 15d-14(b) (17 CFR 240.15d-14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed “filed” for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) *Report on assessment of compliance with servicing criteria for asset-backed securities.* Each report on assessment of compliance with servicing criteria required by § 229.1122(a).

(34) *Attestation report on assessment of compliance with servicing criteria for asset-backed securities.* Each attestation report on assessment of compliance with servicing criteria for asset-backed securities required by § 229.1122(b).

(35) *Servicer compliance statement.* Each servicer compliance statement required by § 229.1123.

(36) through (98) [Reserved]

(99) *Additional exhibits.* (i) Any additional exhibits which the registrant may wish to file shall be so marked as to indicate clearly the subject matters to which they refer.

(ii) Any document (except for an exhibit) or part thereof which is incorporated by reference in the filing and is not otherwise required to be filed by this Item or is not a Commission filed document incorporated by reference in a Securities Act registration statement.

(iii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is made available by “other methods” than those specified in paragraphs (a) or (b) of § 230.158 of this chapter, it must be filed as an exhibit to the Form 10-Q or the Form 10-K, as appropriate, covering the period in which the earnings statement was released.

(100) *XBRL-Related Documents.* Only an electronic filer that prepares its financial statements in accordance with Article 6 of Regulation S-X (17 CFR 210.6-01 *et seq.*) is permitted to partici-

pate in the voluntary XBRL (eXtensible Business Reporting Language) program and, as a result, may submit XBRL-Related Documents (§ 232.11 of this chapter) in electronic format as an exhibit to: the filing to which they relate; an amendment to such filing; or a Form 8-K (§ 249.308 of this chapter) that references such filing, if the Form 8-K is submitted no earlier than the date of filing. Rule 401 of Regulation S-T (§ 232.401 of this chapter) sets forth further details regarding eligibility to participate in the voluntary XBRL program.

(101) *Interactive Data File.* An Interactive Data File (§ 232.11 of this chapter) is:

(i) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant’s corporate Web site, if any, in the manner provided by Rule 405 of Regulation S-T (§ 232.405 of this chapter) if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S-X (17 CFR 210.6-01 *et seq.*) and is described in paragraph (b)(101)(i)(A), (B) or (C) of this Item, except that an Interactive Data File: first is required for a periodic report on Form 10-Q (§ 249.308a of this chapter), Form 20-F (§ 249.220f of this chapter) or Form 40-F (§ 249.240f of this chapter), as applicable; is required for a registration statement under the Securities Act only if the registration statement contains a price or price range; and is required for a Form 8-K (§ 249.308 of this chapter) only when the Form 8-K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle, and, in such case, the Interactive Data File would be required only as to such revised financial statements regardless whether the Form 8-K contains other financial statements:

(A) A large accelerated filer (§ 240.12b-2 of this chapter) that had an aggregate worldwide market value of

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the voting and non-voting common equity held by non-affiliates of more than \$5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(B) A large accelerated filer not specified in paragraph (b)(101)(i)(A) of this Item that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(C) A filer not specified in paragraph (b)(101)(i)(A) or (B) of this Item that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(ii) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(A) Registrant prepares its financial statements:

(1) In accordance with either:

(i) Generally accepted accounting principles as used in the United States; or

(ii) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(2) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(B) Interactive Data File is not required to be submitted to the Commission under paragraph (b)(101)(i) of this Item.

(iii) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with

Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

(c) *Smaller reporting companies.* A smaller reporting company need not provide the disclosure required in paragraph (b)(12) of this Item, Statements re computation of ratios.

[47 FR 11401, Mar. 16, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 229.601, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### Subpart 229.700—Miscellaneous

#### § 229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act. Include sales of reacquired securities, as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) *Securities sold.* Give the date of sale and the title and amount of securities sold.

(b) *Underwriters and other purchasers.* Give the names of the principal underwriters, if any. As to any such securities not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) *Consideration.* As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) *Exemption from registration claimed.* Indicate the section of the Securities Act or the rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

(e) *Terms of conversion or exercise.* If the information called for by this paragraph (e) is being presented on Form 8–K, Form 10–Q, Form 10–K, or Form 10–D under the Exchange Act (§ 249.308,